

**ORIGINAL**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
UNITED STATES OF AMERICA,

- v. -

JAMES GANSMAN and  
DONNA MURDOCH,

Defendants.

INDICTMENT

08 Cr.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DATE FILED 5/27/08

**08 CRIM.**

**471**

-----x  
COUNT ONE

(Conspiracy To Commit Securities Fraud)

The Grand Jury charges:

Relevant Entities and Individuals

1. At all relevant times, Ernst and Young, LLP ("E & Y") operated as a professional services partnership, providing assurance, tax, transaction and advisory services worldwide. As part of its business as a full-service professional services partnership, at all times relevant to this Indictment, E & Y advised entities engaging in mergers and acquisitions transactions and considering engaging in such transactions.
2. At all relevant times, JAMES GANSMAN, the defendant, resided in New York, New York, and was a partner in E & Y and in the "Transactional Advisory Services" department in the New York, New York office of E & Y. At all relevant times, GANSMAN provided transactional advisory services, including human resources consulting services, to E & Y clients. At all relevant

times, GANSMAN was an attorney licensed to practice law in New York.

3. At all relevant times, DONNA MURDOCH, the defendant, resided in Malvern, Pennsylvania, and was employed as a consultant to, and an Investment Banking Managing Director at, a broker-dealer and investment and financial services company in Oaks, Pennsylvania registered with the National Association of Securities Dealers ("NASD") that provided consulting, investment banking, and investment advising services ("Murdoch's Firm"). Murdoch's Firm's website stated that MURDOCH "received a B.S. from The Wharton School of the University of Pennsylvania." In or about April 2006, MURDOCH passed the Series 7 examination and became a registered securities trader with the NASD. In or about May 2006, MURDOCH passed the Series 63 examination and became a registered securities agent with the NASD.

#### E & Y's Confidentiality Policy

4. At all relevant times, E & Y maintained written policies prohibiting the premature dissemination of material non-public and confidential information relating to pending transactions in which E & Y was involved. At or about the time JAMES GANSMAN, the defendant, applied for employment at E & Y in or about July 1991, GANSMAN executed a written acknowledgment that, "[i]f employed by Ernst & Young, [he] underst[oo]d that . . . [he] would be prohibited from disclosing nonpublic information regarding clients or other entities to anyone other than for

authorized firm business, or using it for any personal purpose." Annually beginning at least as early as 2003, GANSMAN was provided with a copy of E & Y's "Policies Regarding Trading of Securities While in Possession of Confidential or Non-Public Information ("Insider Trading")." Annually beginning at least as early as 2002, including on or about April 8, 2003, April 19, 2004, May 13, 2005, May 15, 2006, and April 30, 2007, GANSMAN certified that he had read, understood, and was in compliance with the policy. This policy stated, among other things, the following:

Federal securities laws prohibit the use of certain material non-public information for personal gain.

\* \* \*

Information about the following matters has been found by courts to be material in certain situations: . . . acquisitions, including mergers and tender offers.

\* \* \*

In some situations, the mere fact that we have been engaged by a company may be considered to be material information. Examples are certain special investigation or due-diligence engagements.

\* \* \*

[A] person who has non-public information can violate the securities laws even if he or she does not trade securities but instead "tips" a family member or friend with the information, and that person trades for his or her own account.

\* \* \*

It is the firm's longstanding policy that partners . . . may not purchase or sell securities while in possession of material, non-public information, and may not disclose such information to anyone except on a strict "need-to-know" basis. Violations of this policy can result in immediate dismissal from the firm.

Murdoch's Firm's Confidentiality Policy

5. On or about December 15, 2006, MURDOCH completed a "2006 Annual Compliance Questionnaire" in which she stated that she understood that she could "not use or disseminate to others any material insider information relating to securities."

6. At all relevant times, Murdoch's Firm maintained written policies prohibiting the premature dissemination of material non-public and confidential information relating to pending transactions in which Murdoch's Firm was involved. On or about March 6, 2007, MURDOCH acknowledged receiving Murdoch's Firm's "Policies and Procedures" manual, which included the "Firm Policy On Insider Trading." MURDOCH certified regarding the manual that she was "responsible for knowing its contents" and that she had "read and understood its contents to the level of being able to answer questions about it from supervisors and regulatory auditors and to put its principles in practice." The manual stated, among other things, the following:

SEC Rule 10b-5 under the Securities Exchange Act of 1934 generally makes it unlawful for any person to use . . . material inside

information that has not been publicly disseminated in connection with the purchase or sale of securities.

\* \* \*

It is the policy of [Murdoch's Firm] that no personnel . . . may trade . . . any security of any issuer about which the individual possesses material non-public information at or prior to the time such information is publicly disclosed and available in the marketplace.

\* \* \*

Further, no personnel may communicate any material non-public information to anyone outside the Company . . . .

\* \* \*

Material information is defined as a) information which in reasonable and objective contemplation might affect the value of the issuer's publicly traded securities, or b) information which, if known, would clearly affect investment judgment, or which directly bears on the intrinsic value of the issuer's publicly traded securities. In determining whether the information obtained comes within the above definition, and is therefore unusable, the following terms apply:

"Material information" is any information that a reasonable investor might consider important in making an investment decision. Examples of "material information" would be:

- Mergers, acquisitions, tender offers or restructuring; . . .
- The appointment of an investment banker or signing a letter of intent with an underwriter . . . .

\* \* \*

"Publicly disseminated" means information that is generally available to the public and about which the public has had a reasonable opportunity to make an investment decision.

\* \* \*

The most common violations of the "insider trading" rules include purchasing or selling securities on the basis of such information . . . and "tipping" such information to anyone or using it as a basis for recommending the purchase or sale of a security (this includes spreading rumors).

Persons who are in possession of material inside information that has not been disseminated to the public are prohibited from:

- Purchasing or selling securities for their own accounts . . . ;
- Disclosing such information or any conclusions based thereon to anyone.

If, after considering these items, any of the Company's Registered Representatives . . . believes that the information he or she has is material and non-public, he or she should take the following steps: . . .

- Do not purchase or sell the securities until all concerns have been addressed; and,
- Do not communicate the information to others until there is no danger of insider trading.

#### The Insider Trading Scheme

7. At various times relevant to this Indictment, E & Y provided transaction advisory services to the E & Y clients

listed below, in connection with business combination transactions ("the E & Y Transactions"). While employed at E & Y, JAMES GANSMAN, the defendant, had access to material, non-public information concerning the E & Y Transactions listed below:

E & Y CLIENT	COUNTERPARTY	TRANSACTION	DATE OF PUBLIC ANNOUNCEMENT
Advanced Micro Devices, Inc. ("AMD")	ATI Technologies	AMD subsidiary Alberta ULC to acquire ATI	7/24/2006
Blackstone Group	Freescale Semiconductor	Consortium led by Blackstone to acquire Freescale	9/11/2006
NVIDIA	Portal Player	NVIDIA to acquire Portal	11/6/2006
Polycom	Spectralink	Polycom to acquire Spectralink	2/7/2007
Jarden Corp	K2, Inc.	Jarden to acquire K2	4/25/2007
Siemens	Dade Behring	Siemens to acquire Dade Behring	7/25/2007
Vivendi S.A.	Activision, Inc.	Vivendi to acquire Activision	12/2/2007

8. From in or about May 2006 up to and including in or about December 2007, JAMES GANSMAN and DONNA MURDOCH, the defendants, participated in a scheme to defraud by executing securities transactions based on material, nonpublic information

regarding the E & Y Transactions listed in paragraph 7 above (the "E & Y Inside Information"). At all relevant times, GANSMAN and MURDOCH maintained a relationship of a personal nature.

9. JAMES GANSMAN, the defendant, was the E & Y partner in charge of the human resource consulting services provided by E & Y with respect to all of the E & Y Transactions listed in paragraph 7 above and, due to that position, obtained E & Y Inside Information. GANSMAN regularly and repeatedly communicated with DONNA MURDOCH, the defendant, and provided DONNA MURDOCH, the defendant, with E & Y Inside Information in violation of (a) the fiduciary and other duties of trust and confidence owed by GANSMAN to E & Y and its clients; (b) the expectations of confidentiality of the E & Y clients; and (c) E & Y's written policies regarding the use and safekeeping of confidential and material, non-public information.

10. To carry out the scheme, JAMES GANSMAN, the defendant, typically communicated with DONNA MURDOCH, the defendant, at some point after he had been assigned to work on an E & Y Transaction but before the subject of that particular E & Y Transaction had been publicly and officially announced. During these communications, in breach of the fiduciary and other duties of trust and confidence owed by GANSMAN to E & Y and its clients, the expectations of confidentiality of the E & Y clients, and E & Y's written policies regarding the use and safekeeping of



confidential and material, non-public information, GANSMAN provided E & Y Inside Information to MURDOCH regarding the E & Y Transaction in question. After receiving the E & Y Information, MURDOCH purchased securities of the target company involved in the particular E & Y Transaction based on E & Y Inside Information. MURDOCH used at least two brokerage accounts under her control to execute these transactions, which generated over \$390,000 in profit for her.

11. For example, on or about June 23, 2006, GANSMAN learned that E & Y had been retained by the Blackstone Group ("Blackstone"), a private equity firm, in connection with a possible acquisition by an investment consortium led by Blackstone of Freescale Semiconductor Corporation ("Freescale"), and that Blackstone wanted the transaction to be "treated superconfidential," and was told in an internal E & Y email message, "[d]o not breathe the name of the target outside of team." Between on or about June 23, 2006, and July 18, 2006, GANSMAN and MURDOCH were in frequent contact. For example, during that period, they communicated over 400 times via telephone and text message. In breach of the fiduciary and other duties of trust and confidence owed by GANSMAN to E & Y and its clients, the expectations of confidentiality of the E & Y clients, and E & Y's written policies regarding the use and safekeeping of confidential and material, non-public information,

GANSMAN provided E & Y Inside Information to MURDOCH regarding the transaction in question. Between on or about July 18, 2006, and on or about September 8, 2006, MURDOCH bought options to purchase Freescale stock using one of MURDOCH's brokerage accounts. On or about September 11, 2006, a wire service reported that Freescale would be acquired by an investment consortium led by Blackstone, and Freescale publicly announced it was involved in business discussions. On or about September 11, 2006, MURDOCH sold approximately 410 Freescale options. On or about September 12, 2006, MURDOCH sold approximately 280 Freescale options. MURDOCH profited more than approximately \$158,000 from her trades in Freescale options. On or about September 15, 2006, Freescale publicly announced that Blackstone and other entities would acquire Freescale.

12. Similarly, by at least on or about April 17, 2007, GANSMAN learned that E & Y was performing human resources consulting services for the Jarden Corporation ("Jarden") in connection with a possible acquisition by Jarden of K2, Inc. ("K2"). Between on or about April 17, 2007, and April 24, 2007, GANSMAN and MURDOCH were in frequent contact. For example, during that period, they communicated over 120 times via telephone and text message. In breach of the fiduciary and other duties of trust and confidence owed by GANSMAN to E & Y and its clients, the expectations of confidentiality of the E & Y

clients, and E & Y's written policies regarding the use and safekeeping of confidential and material, non-public information, GANSMAN provided E & Y Inside Information to MURDOCH regarding the transaction in question. On or about April 24, 2007, MURDOCH bought approximately 150 options to purchase K2 stock using one of MURDOCH's brokerage accounts. On or about April 24, 2007, Jarden entered into a definitive plan of merger with K2. On or about April 25, 2007, Jarden publicly announced that it had acquired K2 pursuant to an agreement signed on April 24, 2007. On April 25, 2007, MURDOCH sold approximately 150 K2 options using one of MURDOCH's brokerage accounts. MURDOCH profited more than approximately \$27,000 from her trades in K2 options.

13. Similarly, by at least on or about July 9, 2007, GANSMAN learned that E & Y was performing human resources consulting services for Siemens, a multinational conglomerate, in connection with the possible acquisition by Siemens of Dade Behring, Inc ("Dade"). Between on or about July 9, 2007, and July 12, 2007, GANSMAN and MURDOCH were in frequent contact. For example, during that period, they communicated over 15 times via telephone and text message. In violation of the fiduciary and other duties of trust and confidence owed by GANSMAN to E & Y and its clients, the expectations of confidentiality of the E & Y clients, and E & Y's written policies regarding the use and safekeeping of confidential and material, non-public information, .

GANSMAN provided E & Y Inside Information to MURDOCH regarding the transaction in question. On or about July 12, 2007, MURDOCH bought approximately 100 options to purchase Dade stock using one of MURDOCH's brokerage accounts. On or about July 25, 2007, Siemens publicly announced it had made a tender offer to acquire Dade. On or about July 25, 2007, MURDOCH sold approximately 100 Dade options using one of MURDOCH's brokerage accounts. MURDOCH profited more than approximately \$138,000 from her trades in Dade options.

14. Similarly, by at least on or about August 1, 2007, GANSMAN learned that E & Y was performing human resources consulting services for Vivendi Corporation in connection with the possible acquisition by Vivendi of Activision Corporation. Between on or about August 1, 2007, and August 24, 2007, GANSMAN and MURDOCH were in frequent contact. For example, during that period, they communicated over 140 times via telephone and text message. In breach of the fiduciary and other duties of trust and confidence owed by GANSMAN to E & Y and its clients, the expectations of confidentiality of the E & Y clients, and E & Y's written policies regarding the use and safekeeping of confidential and material, non-public information, GANSMAN provided E & Y Inside Information to MURDOCH regarding the transaction in question. Between on or about November 28, 2007, and on or about November 30, 2007, MURDOCH bought approximately

143 options to purchase Activision stock using one of MURDOCH's brokerage accounts. On or about December 2, 2007, Vivendi publicly announced it was acquiring Activision. On or about December 3, 2007, MURDOCH sold approximately 143 Activision options. MURDOCH profited more than approximately \$19,000 from her trades in Activision options.

The Conspiracy

15. From in or about May 2006 up to and including in or about December 2007, in the Southern District of New York and elsewhere, JAMES GANSMAN and DONNA MURDOCH, the defendants, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Object of the Conspiracy

Securities Fraud

16. It was a part and object of the conspiracy that JAMES GANSMAN and DONNA MURDOCH, the defendants, and others known and unknown, unlawfully, willfully and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, would and did use and employ, in

connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon purchasers and sellers, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Means and Methods of the Conspiracy

17. Among the means and methods by which JAMES GANSMAN and DONNA MURDOCH, the defendants, and their co-conspirators would and did carry out the conspiracy were the following:

a. GANSMAN, in his role as a partner at E & Y in the Transactional Advisory Services department, misappropriated E & Y Inside Information in violation of (a) the fiduciary and other duties of trust and confidence that GANSMAN owed to E & Y and E & Y clients; (b) the expectations of confidentiality of the E & Y clients; and (c) E & Y's written policies regarding the use and safekeeping of confidential and material, non-public information.

b. GANSMAN, in breach of his fiduciary and other duties of trust and confidence to E & Y and its clients, disclosed E & Y Inside Information that he had misappropriated from E & Y and the E & Y clients to MURDOCH, with the understanding that MURDOCH would use E & Y Inside Information to purchase and sell securities, and thereby generate illegal profits.

c. MURDOCH, while in possession of E & Y Inside Information that she knew had been misappropriated by GANSMAN in breach of GANSMAN's duty to keep such information confidential, purchased and sold securities based on such information and thereby received illegal profits.

Overt Acts

18. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. Between on or about June 23, 2006, and July 18, 2006, GANSMAN provided E & Y Inside Information to MURDOCH regarding a possible transaction involving Freescale.

b. Between on or about July 18, 2006, and on or about September 8, 2006, MURDOCH bought Freescale options using one of MURDOCH's brokerage accounts.

c. On or about September 11, 2006, after a wire service had reported that Freescale would be acquired by an investment consortium including Blackstone and Freescale had publicly announced it was involved in business discussions, and on or about September 12, 2006, MURDOCH sold Freescale options using one of MURDOCH'S brokerage accounts.

d. Between on or about April 17, 2007, and April 24, 2007, GANSMAN provided E & Y Inside Information to MURDOCH regarding a possible transaction involving K2.

e. On or about April 24, 2007, MURDOCH bought K2 options using one of MURDOCH's brokerage accounts.

f. On or about April 25, 2007, after Jarden entered into a definitive plan of merger with K2 and publicly announced that it had acquired K2, MURDOCH sold approximately 150 K2 options using one of MURDOCH's brokerage accounts.

g. Between on or about July 9, 2007, and July 12, 2007, GANSMAN provided E & Y Inside Information to MURDOCH regarding a possible transaction involving Dade.

h. On or about July 12, 2007, MURDOCH bought approximately 100 Dade options using one of MURDOCH's brokerage accounts.

i. On or about July 25, 2007, after Siemens publicly announced it had made a tender offer to acquire Dade, MURDOCH sold approximately 100 Dade options using one of



MURDOCH's brokerage accounts.

j. Between on or about August 1, 2007, and August 24, 2007, GANSMAN provided E & Y Inside Information to MURDOCH regarding a possible transaction involving Activision.

k. Between on or about November 28, 2007, and November 30, 2007, MURDOCH bought approximately 143 Activision options using one of MURDOCH's brokerage accounts.

l. On about about December 12, 2007, after Vivendi and Activision publicly announced that Vivendi would acquire Activision, MURDOCH sold approximately 143 Activision options.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH TWELVE

(Securities Fraud)

The Grand Jury further charges:

19. The allegations contained in paragraphs 1-14, and 17-13, of this Indictment are repeated and realleged as if fully set forth herein.

20. On or about the dates set forth below, in the Southern District of New York and elsewhere, JAMES GANSMAN and DONNA MURDOCH, the defendants, unlawfully, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, the mails and the facilities of national securities exchanges, in connection with

the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, GANSMAN provided material, nonpublic information to MURDOCH, in breach of the fiduciary and other duties of trust and confidence owed by GANSMAN to E & Y and its clients, the expectations of confidentiality of the E & Y clients, and E & Y's written policies regarding the use and safekeeping of confidential and material, non-public information, and MURDOCH executed the securities transactions listed below based on the material, non-public information she obtained from GANSMAN:

COUNT	DATE	SECURITY	TRANSACTION
TWO	July 19, 2006	ATI	purchased 63 options
THREE	August 30, 2006	Freescale	purchased 172 options
FOUR	September 1, 2006	Freescale	purchased 195 options
FIVE	September 7, 2006	Freescale	purchased 243 options
SIX	October 30, 2006	Portal Player	purchased 500 options

SEVEN	October 31, 2006	Portal Player	purchased 28 options
EIGHT	February 2, 2007	Spectralink	purchased 130 options
NINE	April 24, 2007	K2	purchased 150 options
TEN	July 12, 2007	Dade Behring	purchased 100 options
ELEVEN	November 28, 2007	Activision	purchased 110 options
TWELVE	November 30, 2007	Activision	purchased 33 options

(Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2, and Title 18, United States Code, Section 2).

FORFEITURE ALLEGATION FOR COUNTS ONE THROUGH TWELVE

21. As the result of committing one or more of the offenses alleged in Counts One through Twelve (i.e., conspiracy to commit securities fraud, in violation of Title 18, United States Code, Sections 371; and securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2; and Title 18, United States Code, Section 2), defendants JAMES GANSMAN and DONNA MURDOCH shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offense.

Substitute Asset Provision

22. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third person;

(3) has been placed beyond the jurisdiction of the Court;

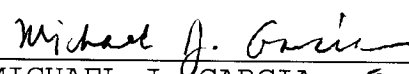
(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property.

(Title 18, United States Code, Section 981, Title 28, United States Code, Section 2461 and Title 18, United States Code, Sections 371, and 2, Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2, Title 21, United States Code, Section 853(p)).

  
FOREPERSON

  
MICHAEL J. GARCIA  
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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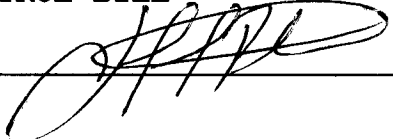
INDICTMENT

08 Cr.

(18 USC 371; 15 USC 78j(b) & 78ff; 17 CFR  
240.10b-5 & 240.10b5-2; 18 USC 2.)

\_\_\_\_\_  
MICHAEL J. GARCIA  
United States Attorney.

A TRUE BILL

\_\_\_\_\_  
  
Foreperson.

5/27/08

*Flt. Sec. Ind. A/w. v. Ind.*

*Mrs. T. J. P. P. P.*